

S.N. 10/612,521

Art Unit 3764

REMARKS:

Claims 3, 6-11, 15 and 18 have been cancelled. New claims 19-22 have been added. Thus, claims 1, 2, 4, 5, 12-14, 16, 17 and 19-22 are pending.

The Examiner rejected original claims 1-18 under 35 U.S.C. 103 (a) as being unpatentable over Cassidy (U.S. Patent No. 744,718) in view of Mauch (European Patent 0320958). In response, all independent claims have been amended and one new independent claim has been added to clarify the differences between the present invention and those of the cited art.

Cassidy teaches a massage ball that features semispherical, integrally formed protuberances. The protuberances are arranged such that both the smooth parts of the ball and the protuberances are pressed against the skin surface *simultaneously* to produce the desired massage effect (see, for example, column 2, lines 87-90 and claim 1, lines 8-14).

Mauch teaches a message ball having a large number of small, cylindrical massage knobs disposed thereon. Mauch's ball is specifically designed for "massaging the reflex zones on the inner surfaces of the hand" (abstract).

Combining the ball of Cassidy with the knobs of Mauch as suggested by the Examiner does not result in the present invention because Cassidy's ball still would not provide a

S.N. 10/612,521

Art Unit 3764

device as claimed herein or disclose or suggest the claimed trigger-point massage method.

Regarding the method claims, the applicant has amended claim 1 to recite, in relevant part, the step of "applying localized pressure to a trigger-point using a single pliable node of said spherical ball." Besides the fact that there is no disclosure or suggestion at all involving the location or massage of trigger points, Cassidy actually teaches away from the application of localized pressure with a single node. Instead, Cassidy teaches the application of both the smooth part of the sphere and more than one protuberance simultaneously to a user's skin ("said protuberances ranged over the surface area of the sphere at such relative distances from each other that a *plurality* of them *and part of the surface of said sphere* may be *simultaneously pressed into contact with the skin surface* in massage operations" claim 1, lines 8-14, emphasis added). Therefore, even if one substituted Mauch's knobs for the Cassidy's protuberances, Cassidy's ball still would be designed to knead muscles by having "the smooth surface of the sphere contacting with the convexities of the skin surface, while the protuberances act on the hollows" (col. 2, lines 87-90). In other words, the application of more than one massaging "projection" and part of the smooth surface of the ball are taught no matter whether those "projections" are protuberances as disclosed by Cassidy or the cylindrical knobs of Mauch.

The structure of the massaging device that is the subject of the remaining independent claims (13 and 21) also is not obvious because the restricted number and spacing of

S.N. 10/612,521

Art Unit 3764

nodes are not described or suggested in the cited art. To establish *prima facie* obviousness of a claimed invention, all the claimed limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q 580 (C.C.P.A. 1974). However, nowhere in the combination of the Cassidy and Mauch references is the motivation, suggestion, or an enabling description found for claim limitations "8 to 14 pliable nodes projecting axially from the surface of the spherical ball, wherein said pliable nodes are substantially cylindrical and are between one-half inch to one inch in both length and diameter" (claim 13) and "an array of 10 pliable nodes projecting axially from the surface of the spherical ball, wherein said pliable nodes are substantially cylindrical, are evenly spaced apart from each other, and are disposed upon a rigid pin in press-fit arrangement with said spherical ball" (claim 21).

The applicant further respectfully submits that the number, size, and structure of the nodes are not simply a matter of design choice. As stated in the specification at page 9:

The restricted number and spacing of nodes are due to roll and pressure requirements discovered by the inventor. The nodes must be spaced apart in such a manner to allow the device to roll while searching for trigger points and still provide adequate pressure to find and release them. If the nodes are spaced too far apart, the device will not roll effectively and if the nodes are spaced too close together, the nodes would not provide adequate or localized pressure at the trigger point. Moreover, the number and size of the nodes dictates the spacing between them and the degree of penetration into the body when pressure is applied. Thus, the preferred size of each node is between one-half inch to one inch in both length L and diameter D as shown in Fig. 1.

Several dependent claims also have been amended or added to emphasize additional distinguishing features of the invention, such as the pliable nodes of some embodiments of the invention being disposed upon a rigid pin in press-fit arrangement with the spherical ball as shown in Fig. 2.

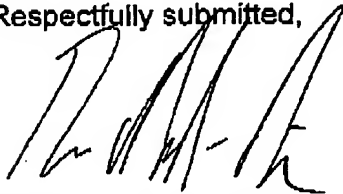
S.N. 10/612,521

Art Unit 3764

For the forgoing reasons, the applicant respectfully submits that all independent claims are not rendered obvious. Moreover, since the independent claims are believed to be distinguishable from the cited art, all dependent claims are also believed to be so distinguished. Thus, the applicant respectfully requests reconsideration of the rejections and advancement of this case to allowance.

Although four new claims were added, the application still contains at total of only 13 claims, three of which are independent. Accordingly, no fee is believed to be due with this response. Should there be any unforeseen costs, please charge our Deposit Account No. 17-0055.

Respectfully submitted,



Quarles & Brady Streich Lang LLP

Gavin J. Milczarek-Desai
Reg. No. 45,801
(520) 770-8716 phone
(520) 770-2235 fax